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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,410	03/09/2004	Frederick R. Peterson	35031.001	9032

7590 07/11/2006

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EXAMINER
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ELKINS, GARY E

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/796,410

Applicant(s)

PETERSON, FREDERICK R.

Examiner

Gary E. Elkins

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 7-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 1-6 in the reply filed on 02 June 2006 is acknowledged. The traversal is on the ground(s) that (1) claims 1-6 require a container including rolled paper products and therefor the container of claims 1-6 could not be used to store and dispense other products such as batteries or cans, i.e. the dispenser of claims 1-6 could not be used in another and materially different method of use from that claimed, and (2) the search and examination of both sets of claims could be conducted without serious burden as compared to the search and examination of the elected invention.

This is not found persuasive because the fact that claims 1-6 define an intended use of the dispenser with rolled paper products does not limit the product to having rolled paper products therein. Claims 1-6 are defining a product which can have any like sized contents therein. Rolled paper products are not required by these claims. As such, claims 1-6 as claimed can be used in another and materially different method of use as compared to claims 7-11. Also, significant additional time would be required to search and examine all the inventions as compared to the product of claim 1-6. The field of search with respect to claims 7-11 would encompass method of use areas which are not required to examine the box per se. Also, the additional claims (as well as any future amended method claims which Applicant may choose to include) would require significant further examination time to handle the additional method limitations and application of the appropriate method related prior art.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 7-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 02 June 2006.

*Claim Rejections - 35 USC § 112*

3. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 2, it is unclear what is defined as “comprising”, i.e. the dispensing aperture or the dispenser.

In claim 5, “at least one additional vertical piece” is unclear with respect to whether the additional vertical piece is one of the previously defined vertical pieces or a different vertical piece. If the one referred to is one of the previously defined vertical pieces, then the phrase is a double inclusion of an element, i.e. the element is being reintroduced into the claims. If a different vertical piece is the intended meaning, it is unclear from the disclosure what element, as disclosed, is being referred to.

In claim 6, it is unclear how one pivoting tab can fasten both the top flap and bottom flap, i.e. it would appear from the description that at least two tabs would have to be present to fasten both.

In claim 6, “one or more vertical pieces” appears to be a double inclusion of an element.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassoli et al (EP '852) in view of either Chapman or Myers. Cassoli et al discloses all structure of the claimed dispenser except a bottom flap and top flap allowing the container to be collapsed when unsecured. Each of Chapman and Myers teaches that it is known to make a box with top and bottom flaps which, when unsecured, allow the box to fold flat. It would have been obvious to make the box in Cassoli et al with top and bottom flaps as taught by either Chapman or Myers to allow collapse of the container and to provide positively locked end closures preventing inadvertent separation of the closure flaps.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Murdock et al. Modified Cassoli et al evidences all structure of the claimed container except a height of the dispenser approximately equal to six times the diameter of the rolled product. Murdock et al teaches that it is known to make a dispenser with a height capable of holding a stack of six products. It would have been obvious to make the container of Cassoli et al with a height sufficient to hold six items in a stack as taught by Murdock et al as a mere selection of how many items one wishes to hold and dispense from the container.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Reynolds. Modified Cassoli et al evidences all structure of the claimed container except a window formed on the front of the dispenser (Cassoli et al discloses a window on the side). Reynolds teaches that it is known to locate a window in a dispenser on the front wall of the dispenser. It would have been obvious to locate the window on the front wall in Cassoli et al as taught by Reynolds to allow viewing of the contents from the front while dispensing of the contents.

### ***Conclusion***

The cited patent to Johnson is illustrative of the general state of the art.

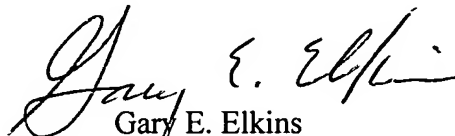
In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.

  
Gary E. Elkins  
Primary Examiner  
Art Unit 3727

gee  
05 July 2006